



## **House Bill 672/HJCS Page 2**

The bill further requires that day labor service agency pay laborers “on demand”, and provide laborer with itemized statement showing deductions from wages.

The committee substitute adds additional criteria for check cashing services that are operating as day labor service agencies. The additional criteria include: (1) the day labor service agency may not charge in excess of \$2.00 for cashing a check or payment instrument that is issued by the agency. (2) States that no fees may be charged for cashing a check or payment instrument unless the day laborer is given the option of being paid with an instrument that is payable without a fee at a local financial institution or if the day laborer voluntarily elects to cash the check at the day labor service agency. (3) Requires day labor service agencies to place public notices that state in English, Spanish, Navajo and any other written language where there is a high percentage of workers who speak that language the fee for cashing a check.

The committee substitute modifies the criminal penalties section of the bill so that the penalties are consistent with other misdemeanor penalties defined in NMSA 1978, §31-19-1. The committee substitute adds increased penalties for second and subsequent violations and adds a section stating that each

### Significant Issues

Labor and Industrial Division of New Mexico Department of Labor has no current authority to prosecute criminal actions, but can prosecute civil actions.

HB 672 provides that an employer may not reduce through deductions, other than mandatory federal or state deductions, a day laborer’s wages below the federal minimum wage.

### **FISCAL IMPLICATIONS**

There is no appropriation in this bill. Currently, there are about 186,000 citizens per labor law administrator (LLA) statewide, with the current staff of eight LLA’s. DOL estimates that three additional FTE would be required to implement the responsibilities as proposed by this bill. The additional FTE will require a recurring annual appropriation from the general fund to the Department of \$240 thousand annually.

The bill does impose mandatory fines for subsequent violations of these misdemeanors. This may result in additional revenue for the state. It is highly likely that fines, not probation or jail time, will be imposed for violation of these new misdemeanors.

### **ADMINISTRATIVE IMPLICATIONS**

The bill provides for the department of labor to investigate complaints of violations and enforce the Act. It also requires that the department of labor adopts rules necessary to implement the Act.

Labor and Industrial Division of the New Mexico Department of Labor currently performs these functions for unpaid wage claims for other employees, and can prosecute civil actions against employers, but has no authority to prosecute criminal actions. DOL acknowledges that the Act will require additional staff and resources.

**TECHNICAL ISSUES**

Section 6 B provides for record retention of a day labor service agency for a least one year. However, any investigation or audit done by the department involves the previous calendar year. Day laborer records need to be maintained for a minimum of two years.

**OTHER SUBSTANTIVE ISSUES**

The bill exempts the following from the Act: Farm labor contractors, temporary services employment agencies, labor union hiring hall, and labor bureau or entity “whose sole purpose is to employ a person for its own use.”

Labor and Industrial Division of NM Department of Labor has no authority to enforce Federal minimum wage laws; the division can only enforce State minimum wage laws. Current State minimum wage is the same as Federal, but that could change in the future.

**BD/njw:lg**